

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
SUN RIVER BASIN (41K)

\*\*\*\*\*

CLAIMANT: USA (Department of Agriculture Forest  
Service)

**CASE 41K-0228-R-2023**

41K 56663-00  
41K 56664-00  
41K 56665-00  
41K 56666-00  
41K 56673-00  
41K 56695-00  
41K 56696-00  
41K 56702-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## MASTER'S REPORT

All water right claims that appeared in the Preliminary Decree for Sun River (Basin 41K) were subject to “issue remarks” resulting from pre-decree examination by the DNRC, objections, and counterobjections. The above-captioned claims received an issue remark during the DNRC’s review of the claims.

The claims were consolidated into Case 41K-0228-R-2023 and an Order Setting Filing Deadline was issued by the Water Court requesting any additional information needed to resolve the issue remarks.

### FINDINGS OF FACT

1. Claim 41K 56696-00 received the following substantive issue remarks:

AN AMENDMENT WAS SUBMITTED ON 08/12/2020 REQUESTING TO AMEND THE FLOW RATE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

AN AMENDMENT WAS SUBMITTED ON 08/13/2020 REQUESTING TO AMEND THE MEANS OF DIVERSION AND FLOW RATE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

Each of the remaining claims received the following substantive issue remark:

AN AMENDMENT WAS SUBMITTED ON 08/12/2020 REQUESTING TO AMEND THE FLOW RATE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

2. On May 17, 2023, Claimant United States Department of Agriculture, Forest Service (“Forest Service”) filed a *Response* which reiterated that the previously filed amendments, resolved the issue remarks, and brought the claims into historical conformity. The *Response* states that correction to the flow rate is necessary to correct a decimal error in the original filing. Additionally, the *Response* states that the means of diversion for claim 41K 56696-00 should be modified to “developed spring” to accurately reflect historical usage of the claim. The *Response* included attachments of the amendments requesting the following modifications to the claims:

**41K 56696-00**

5. Means of Diversion: ☐ Well ☐ Instream Use ☐ Dam  
☐ Headgate ☐ Pump: Capacity - \_\_\_\_\_ gpm  
☒ Other - Developed Spring

8. Flow Rate Claimed: 5.0 ☐ cubic feet per second  
☒ gallons per minute  
☐ miner's inches

**41K 56663-00, 41K 56664-00, 41K 56665-00, 41K 56666-00, 41K 56673-00,  
41K 56695-00, and 41K 56702-00**

8. Flow Rate Claimed: 5.0 ☐ cubic feet per second  
☒ gallons per minute  
☐ miner's inches

3. Claims 41K 56666-00, 41K 56673-00, and 41K 56696-00 also received notice-type issue remarks from the DNRC during claims reexamination. No objections were filed.

**PRINCIPLES OF LAW**

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

**CONCLUSIONS OF LAW**

1. The proposed modifications contained in the Forest Service's *Response* and previously filed *Motion to Amend* resolve the issue remarks appearing on the claims. Based on the information contained in the Forest Service's *Response*, along with the information contained in the attached *Motion to Amend*, the claims should be modified as described in Finding of Fact No. 2. The modifications resolve the issue remarks, and the issue remarks should be removed from the claims.

2. The requested amendments and modifications do not have the reasonable potential to adversely affect other water rights as they are corrections to the abstracts which do not make any change to the actual historical use of the claimed right on the ground. Notice by publication of these amendments is not required.

3. The notice-type issue remarks appearing on claims 41K 56666-00, 41K 56673-00, and 41K 56696-00 served their notice purpose and should be removed from the claims.

### RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

Post decree abstracts of the water right claims reflecting the recommended changes are attached to this Report.

### **ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via USPS Mail:**

USA (Department of Agriculture Forest Service)  
Water Rights Program Manager,  
Northern Region  
26 Fort Missoula Rd  
Missoula, MT 59804-7203

#### **Service Via Electronic Mail:**

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**Service List Updated: 7/20/2023**

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SUN RIVER  
BASIN 41K**

**Water Right Number:** 41K 56663-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804 7203

**Priority Date:** JUNE 4, 1930

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 5.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

**Source Name:** UNNAMED TRIBUTARY OF SUN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESE	35	22N	9W	LEWIS AND CLARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PUMP

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESE	35	22N	9W	LEWIS AND CLARK

SECTION 35 IS PROTRACTION BLOCK PB51

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SUN RIVER  
BASIN 41K**

**Water Right Number:** 41K 56664-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804 7203

**Priority Date:** NOVEMBER 21, 1952

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 5.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

**Source Name:** UNNAMED TRIBUTARY OF SUN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESE	35	22N	9W	LEWIS AND CLARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** OTHER DIVERSION

THE MEANS OF DIVERSION IS A LOW CAPACITY PUMP OR BUCKET.

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESE	35	22N	9W	LEWIS AND CLARK

SECTION 35 IS PROTRACTION BLOCK PB51

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SUN RIVER  
BASIN 41K**

**Water Right Number:** 41K 56665-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804 7203

**Priority Date:** NOVEMBER 12, 1953

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 5.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

**Source Name:** UNNAMED TRIBUTARY OF SUN RIVER

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESE	35	22N	9W	LEWIS AND CLARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** OTHER DIVERSION

THE MEANS OF DIVERSION IS A LOW CAPACITY PUMP OR BUCKET.

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESE	35	22N	9W	LEWIS AND CLARK

SECTION 35 IS PROTRACTION BLOCK PB51

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SUN RIVER  
BASIN 41K**

**Water Right Number:** 41K 56666-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804 7203

**Priority Date:** APRIL 21, 1930

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 5.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

**Source Name:** SPRING, UNNAMED TRIBUTARY OF SUN RIVER

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENENE	36	22N	9W	TETON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** SPRING BOX

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NENE	36	22N	9W	TETON

SECTION 36 IS PROTRACTION BLOCK PB52



**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SUN RIVER  
BASIN 41K**

**Water Right Number:** 41K 56673-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804 7203

**Priority Date:** DECEMBER 17, 1951

**Type of Historical Right:** USE

**Purpose (use):** COMMERCIAL

**Flow Rate:** 5.00 GPM

**Volume:** 0.36 AC-FT

**Source Name:** SPRING, UNNAMED TRIBUTARY OF SUN RIVER

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESESE	35	22N	9W	LEWIS AND CLARK

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** SPRING BOX

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESE	35	22N	9W	LEWIS AND CLARK

SECTION 35 IS PROTRACTION BLOCK PB51

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SUN RIVER  
BASIN 41K**

**Water Right Number:** 41K 56695-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804 7203

**Priority Date:** APRIL 28, 1929

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 5.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

**Source Name:** SPRING, UNNAMED TRIBUTARY OF SUN RIVER

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSW	35	22N	9W	TETON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** FLOWING

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWSW	35	22N	9W	TETON

SECTION 35 IS PROTRACTION BLOCK PB51.

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SUN RIVER  
BASIN 41K**

**Water Right Number:** 41K 56696-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804 7203

**Priority Date:** APRIL 28, 1929

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 5.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

**Source Name:** SPRING, UNNAMED TRIBUTARY OF SUN RIVER

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSW	35	22N	9W	TETON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** DEVELOPED SPRING

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWSW	35	22N	9W	TETON

SECTION 35 IS PROTRACTION BLOCK PB51

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
SUN RIVER  
BASIN 41K**

**Water Right Number:** 41K 56702-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** USA (DEPT OF AGRICULTURE FOREST SERVICE)  
WATER RIGHTS PROGRAM MANAGER, NORTHERN REGION  
26 FORT MISSOULA RD  
MISSOULA, MT 59804 7203

**Priority Date:** OCTOBER 18, 1928

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

**Flow Rate:** 5.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

**Source Name:** SPRING, UNNAMED TRIBUTARY OF SUN RIVER

**Source Type:** GROUNDWATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESWNE	26	22N	10W	TETON

**Period of Diversion:** JUNE 1 TO NOVEMBER 30

**Diversion Means:** SPRING BOX

**Period of Use:** JUNE 1 TO NOVEMBER 30

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWNWSE	26	22N	10W	TETON